

Chapter 10

Board of Water Resources - Division of Water Resources

73-10-1 State's policy -- Creation of revolving fund -- General construction of act.

- (1) The Legislature of the state of Utah having heretofore declared by Section 73-1-1, Utah Code Annotated 1953, that, "All waters of this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof"; and further, by Section 73-1-3, Utah Code Annotated 1953, that "Beneficial use shall be the basis, the measures and the limit of all rights to the use of water in this state"; and further, by Section 17B-2a-1002 that the policy of the state is, "To obtain from water in Utah the highest duty for domestic uses and irrigation of lands in Utah within the terms of interstate compacts or otherwise," now by this act reiterates and reaffirms such declaration of the public policy of the state of Utah.
- (2) It is further declared to be the policy of this chapter and of the state of Utah, and the legislature recognizes:
 - (a) that by construction of projects based upon sound engineering the waters within the various counties of the state of Utah can be saved from waste and increased in efficiency of beneficial use by 25% to 100%;
 - (b) that because of well-known conditions such as low prices and lack of market for farm products, particularly the inefficiency of water supply because of lack of late season water and consequent lack of financial strength, water users in small communities have been unable to build projects that would provide full conservation and beneficial use for the limited water supply in this semiarid land;
 - (c) that water, as the property of the public, should be so managed by the public that it can be put to the highest use for public benefit;
 - (d) that Congress of the United States has provided for the building of larger water conservation projects throughout the semiarid states, payment of the capital costs without interest to be made by the water users upon the basis of a fair portion of crop returns;
 - (e) that the Congress of the United States has established in the department of interior and in the department of agriculture, various agencies having authority to develop, protect, and aid in putting to beneficial use the land and water resources of the United States and to cooperate with state agencies having similar authority;
 - (f) that the interests of the state of Utah require that means be provided for close cooperation between all state and federal agencies to the end that the underground waters and waters of the small streams of the state, and the lands thereunder, can be made to yield abundantly and increase the income and well-being of the citizens of the state;
 - (g) that it appears to be sound public policy for the state of Utah to provide a revolving fund, to be increased at each legislative session, to the end that every mountain stream and every water resource within the state can be made to render the highest beneficial service, such fund to be so administered that no project will be built except upon expert engineering, financial, and geological approval.
- (3) All of the provisions of this chapter shall be liberally construed so as to carry out and put into force and effect the purposes and policies as hereinabove set forth.

Amended by Chapter 329, 2007 General Session

73-10-1.5 Board of Water Resources -- Creation -- Transfer of powers and duties.

There is created within the Department of Natural Resources a Board of Water Resources which, except as otherwise provided in this act, shall assume all of the policy-making functions, powers, duties, rights and responsibilities of the Utah water and power board, together with all functions, powers, duties, rights and responsibilities granted to the Board of Water Resources by this act. The Board of Water Resources shall be the policy-making body of the Division of Water Resources. Except as otherwise provided in this act, whenever reference is made in Title 73, Water and Irrigation, or any other provision of law, to the Utah Water and Power Board, it shall be construed as referring to the Board of Water Resources where such reference pertains to policy-making functions, powers, duties, rights and responsibilities; but in all other instances such reference shall be construed as referring to the Division of Water Resources.

Enacted by Chapter 176, 1967 General Session

73-10-2 Board of Water Resources -- Members -- Appointment -- Terms -- Vacancies.

- (1)
 - (a) The Board of Water Resources shall be comprised of eight members to be appointed by the governor with the consent of the Senate.
 - (b) In addition to the requirements of Section 79-2-203, not more than four members shall be from the same political party.
- (2) One member of the board shall be appointed from each of the following districts:
 - (a) Bear River District, comprising the counties of Box Elder, Cache, and Rich;
 - (b) Weber District, comprising the counties of Weber, Davis, Morgan, and Summit;
 - (c) Salt Lake District, comprising the counties of Salt Lake and Tooele;
 - (d) Provo River District, comprising the counties of Juab, Utah, and Wasatch;
 - (e) Sevier River District, comprising the counties of Millard, Sanpete, Sevier, Piute, and Wayne;
 - (f) Green River District, comprising the counties of Daggett, Duchesne, and Uintah;
 - (g) Upper Colorado River District, comprising the counties of Carbon, Emery, Grand, and San Juan; and
 - (h) Lower Colorado River District, comprising the counties of Beaver, Garfield, Iron, Washington, and Kane.
- (3)
 - (a) Except as required by Subsection (3)(b), all appointments shall be for terms of four years.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
 - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate and shall be from the same district as such person.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

73-10-3 Organization of board -- Interstate conferences -- Designation of representative -- Salary -- Compacts -- Ratification required.

The board shall elect a chairman, one or more vice-chairmen, who shall be members of the board, and shall establish its own rules of organization and procedure.

The board, with the approval of the executive director of natural resources and the governor, shall designate a representative who may be one of its members to represent the state of Utah in all interstate conferences between the state of Utah and one or more sister states held for the purpose of entering into compacts between such states for the division of the waters of interstate rivers, lakes, or other sources of water supply, and to represent the state of Utah upon all commissions or other governing bodies provided for by any compacts which have been or may hereafter be entered into between the state of Utah and one or more sister states. No such compact shall, however, become binding upon the state of Utah until it has been ratified and approved by the Legislature of the state of Utah and the legislatures of other states which are parties thereto.

In acting as such representative of the state of Utah, the representative so acting shall act under the supervision of the governor, through the executive director of natural resources and of the Board of Water Resources. The director of the Division of Finance shall fix the salary to be paid to the representative while he is acting in this capacity.

Amended by Chapter 320, 1983 General Session

73-10-4 Powers and duties of board.

The board shall have the following powers and duties:

- (1) To authorize studies, investigations, and plans for the full development, and utilization and promotion of the water and power resources of the state, including preliminary surveys, stream gauging, examinations, tests, and other estimates either separately or in consultation with federal, state and other agencies.
- (2) To enter into contracts subject to the provisions of this act for the construction of conservation projects which in the opinion of the board will conserve and utilize for the best advantage of the people of this state the water and power resources of the state, including projects beyond the boundaries of the state of Utah located on interstate waters when the benefit of such projects accrues to the citizens of the state.
- (3) To sue and be sued in accordance with applicable law.
- (4) To supervise in cooperation with the governor and the executive director of natural resources all matters affecting interstate compact negotiations and the administration of such compacts affecting the waters of interstate rivers, lakes and other sources of supply.
- (5) To contract with federal and other agencies and with the National Reclamation Association and to make studies, investigations and recommendations and do all other things on behalf of the state for any purpose which relates to the development, conservation, protection and control of the water and power resources of the state.
- (6) To consult and advise with the Utah Water Users' Association and other organized water users' associations in the state.
- (7) To consider and make recommendations on behalf of the state of Utah of reclamation projects or other water development projects for construction by any agency of the state or United States and in so doing recommend the order in which projects shall be undertaken.
- (8) Nothing contained herein shall be construed to impair or otherwise interfere with the authority of the state engineer granted by Title 73, Water and Irrigation, except as herein specifically otherwise provided.

Amended by Chapter 198, 1969 General Session

73-10-5 Selection of project by board -- Preparation of plans and estimate of cost -- Contracts by board.

When a project to be constructed with money made available from the funds created by Section 73-10-8 has been selected by the board, which in its opinion, will conserve the water resources of this state for the best interests of the citizens of the state, the board shall cause plans and cost estimates of such project to be prepared. Such plans and cost estimates shall then be referred to the director of the Division of Finance who shall determine whether or not funds are available for the construction of the project. If the director of the Division of Finance approves the project so far as the availability of funds is concerned, the Utah water and power board shall then enter into a contract or contracts for the construction of the project. Such contracts shall not be binding upon the state until approved by the director of the Division of Finance from the standpoint of whether or not the cost of the work is reasonable and whether the contract has been entered into under the terms and conditions most advantageous to the state.

Amended by Chapter 320, 1983 General Session

73-10-6 Making water available to citizens of state -- Assessment of charges against water users -- Water Resources Construction Fund.

The Board of Water Resources may make available for the use of the citizens of the state who are, in its opinion, best able to utilize the same, any or all water and power conserved by any of the projects to which the state may have title and may enter into contracts for the use of said water and power with individuals or with organizations composed of citizens of the state of Utah. The board may assess against any person using such water and power such charges as, in the opinion of the board, are necessary and reasonable for the maintenance of the project and return to the state the actual costs of the project over such term of years as the board may deem it advisable. Any amount collected as charges over and above the amount necessary to maintain any particular project shall become part of the Water Resources Construction Fund.

Amended by Chapter 169, 1988 General Session

73-10-7 Title to projects -- Contractual powers of board.

Title of all projects constructed with funds made available by Section 73-10-8 hereof under the terms of this act shall become vested in the state of Utah. The board is empowered to enter into contracts which are, in its opinion, necessary for the maintenance and continued operation of such projects.

No Change Since 1953

73-10-8 Water Resources Construction Fund -- Creation and contents of fund -- Use -- Investigation Account created -- Interest -- Retainage -- Loans and grants for dam safety work.

- (1) There is created the Water Resources Construction Fund, which consists of:
 - (a) money appropriated or otherwise made available to it by the Legislature;
 - (b) money from the sale or management of the 500,000 acres of land selected for the establishment of reservoirs under Section 12 of the Utah Enabling Act;
 - (c) charges assessed against water and power users pursuant to Section 73-10-6; and
 - (d) interest accrued pursuant to Subsection (5).

- (2) The board may authorize the use of money in the fund for the following purposes:
 - (a) to develop water conservation projects, including paying the costs of construction, engineering, investigation, inspection, and other related expenses;
 - (b) to provide loans and grants to dam owners to conduct dam safety studies;
 - (c) to provide loans and grants to dam owners:
 - (i) to upgrade dams in conformance with the minimum standards established by the state engineer in rules; or
 - (ii) for nonstructural solutions developed to meet minimum standards or lower hazard ratings that are approved by the state engineer, including the purchase of habitable structures, purchase of flood easements, and installation of early warning systems; or
 - (d) as otherwise provided by law.
- (3) The board may provide for the repayment of the costs of investigation, engineering, and inspection out of the first money to be paid under a contract for the construction of a water project. The money repaid shall be deposited into a subaccount within the Water Resources Construction Fund known as the Investigation Account, to be used by the board for the purpose of making investigations for the development and use of the water resources of the state.
- (4) Contributions of money, property, or equipment may be received from any political subdivision of the state, federal agency, water users' association, person, or corporation for use in making investigations, constructing projects, or otherwise carrying out the purposes of this section.
- (5) All money deposited into the Water Resources Construction Fund shall be invested by the state treasurer with interest accruing to the Water Resources Construction Fund.
- (6) If any payment on a contract with a private contractor to construct a project funded by the Water Resources Construction Fund is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.
- (7) Loans to dam owners for dam safety studies and to upgrade dams in conformance with minimum standards shall be secured by taking water rights associated with the dam.
- (8) The following restrictions apply to any grant made to a dam owner for a dam safety study:
 - (a) only a nonprofit mutual irrigation company or a water users association is eligible to receive a grant;
 - (b) the dam safety study shall be required by the state engineer pursuant to Section 73-5a-503; and
 - (c) the amount of any grant shall be limited to up to 50% of the costs of the dam safety study.
- (9)
 - (a) The board may provide grants to mutual irrigation companies and water users associations to upgrade dams in conformance with minimum standards of the state engineer. Each grant authorized by the board for the upgrade of a dam of a mutual irrigation company or water users association in conformance with the minimum standards shall be sufficient to pay for 80% of the costs to upgrade the dam.
 - (b)
 - (i) Pursuant to guidelines specified in Subsection (9)(b)(ii), the board may provide loans or grants, or both, to entities other than mutual irrigation companies and water users associations to upgrade dams in conformance with minimum standards of the state engineer.
 - (ii) In determining the type of financial assistance to be provided to an entity other than a mutual irrigation company or water users association, the board shall consider the dam owner's ability to pay and may consider other factors including:
 - (A) the degree of hazard;
 - (B) the threat to public safety;

- (C) the state engineer's priority list of dams;
 - (D) the cost effectiveness of the restoration;
 - (E) the number of potential and actual applications for financial assistance; and
 - (F) the funds available.
- (10) The amount of money in the fund that may be used for grants for dam safety studies shall be limited to the amount of money appropriated to the fund for that purpose.
- (11) The board shall consult with the state engineer in establishing a priority list of dams to be upgraded with money in the fund.
- (12) A dam owner who has initiated or completed construction approved by the state engineer to upgrade the dam in conformance with minimum standards may apply for a grant or loan from the board as reimbursement for those construction expenditures.

Amended by Chapter 342, 2011 General Session

73-10-11 Counsel to board and representative -- Utilization of other departments -- Duty of executive secretary of board to collect on water contracts.

The attorney general shall act as legal counsel to the board, and to its representative as hereinbefore provided for, and the board shall wherever practicable utilize the services and facilities of other departments of the state government. The executive secretary of the Utah water and power board shall be charged with the duty of collecting any and all amounts due on contracts with water users.

Amended by Chapter 133, 1953 Special Session C

73-10-12 Appropriations.

There is appropriated out of any money from the state treasury the sum of \$200,000 for the administration of this act. There is further appropriated the sum of \$1,000,000 to become a part of the Utah water and power board construction fund.

No Change Since 1953

73-10-13 Appropriation for loan fund.

There is appropriated out of the General Fund not otherwise appropriated, the sum of \$1,000,000 to the Utah water and power board as a permanent increase to the loan fund of Utah water and power board.

Enacted by Chapter 199, 1963 General Session

73-10-15 State water plan -- Agencies to cooperate in formulation of plan.

All other state agencies shall cooperate with the Division of Water Resources in the formulation of a state water plan and the division is to use information, including water resources data, which has been or will be assembled by other state agencies, the United States government, various colleges and universities of the state, or any other source which can profitably contribute to the development of a state water plan.

Amended by Chapter 176, 1967 General Session

73-10-16 State water plan -- Payment for special studies and investigations.

Special studies or investigations needed for development of a water plan which might be requested of other agencies, but not included in the budgets or the work programs of such agencies, may be paid for from funds hereby appropriated for the formulation of a state water plan.

Enacted by Chapter 178, 1963 General Session

73-10-17 State water plan -- Authority of other agencies not impaired.

Nothing contained herein shall be construed to impair or otherwise interfere with the authority heretofore granted to other agencies, institutions or subdivisions of the state of Utah.

Enacted by Chapter 178, 1963 General Session

73-10-18 Division of Water Resources -- Creation -- Power and authority.

- (1) There is created the Division of Water Resources, which shall be within the Department of Natural Resources under the administration and general supervision of the executive director of natural resources and under the policy direction of the Board of Water Resources.
- (2) The Division of Water Resources shall:
 - (a) be the water resource authority for the state; and
 - (b) assume all of the functions, powers, duties, rights, and responsibilities of the Utah water and power board except those which are delegated to the board by this act and is vested with such other functions, powers, duties, rights and responsibilities as provided in this act and other law.

Amended by Chapter 58, 2016 General Session

73-10-19 Director's power and authority.

The director shall:

- (1) be the executive and administrative head of the Division of Water Resources;
- (2) be selected with special reference to training, experience, and interest in the field of water conservation and development;
- (3) administer the Division of Water Resources;
- (4) succeed to all of the powers and duties conferred upon the executive secretary of the Utah water and power board pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; and
- (5) have the power, within rules established by the Board of Water Resources, to:
 - (a) make studies, investigations, and plans for the full development and utilization and promotion of the water and power resources of the state, including preliminary surveys, stream gauging, examinations, tests, and other estimates either separately or in consultation with federal, state, and other agencies;
 - (b) initiate and conduct water resource investigations, surveys and studies, prepare plans and estimates, make reports thereon, and perform necessary work to develop an over-all state water plan;
 - (c) file applications in the name of the division for the appropriation of water;
 - (d) take all action necessary to acquire or perfect water rights for projects sponsored by the board; and
 - (e) accept, execute, and deliver deeds and all other conveyances.

Amended by Chapter 58, 2016 General Session

73-10-20 Loans for water systems -- Legislative declaration -- Authority of Division of Water Resources to audit water data.

The Legislature recognizes and declares that:

- (1) the development, protection, and maintenance of adequate and safe water supplies for human consumption is vital to public health, safety, and welfare;
- (2) there exists within the state a need to assist cities, towns, improvement districts, and special service districts in providing an adequate and safe water supply for those users from municipal and district systems; and
- (3) the acquisition or construction of systems and the improvement and extension of existing systems, based on proper planning and sound engineering, will not only provide safer water supplies, but will also serve to ensure that the water resources of the state are used in an efficient manner and will avoid wasteful practices.

Amended by Chapter 58, 2016 General Session

73-10-21 Loans for water systems -- Eligible projects.

This chapter shall apply to all eligible projects of incorporated cities and towns, local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, assessment areas under Title 11, Chapter 42, Assessment Area Act, and special service districts under Title 17D, Chapter 1, Special Service District Act. Eligible projects are those for the acquisition, improvement, or construction of water systems used for the production, supply, transmission, storage, distribution, or treatment of water for cities, towns, metropolitan water districts, water conservancy districts, improvement districts, special improvement districts, or special service districts, or the improvement or extension of such systems.

Amended by Chapter 360, 2008 General Session

73-10-22 Water Resources Cities Water Loan Fund -- Annual appropriation -- Interest.

- (1) Beginning with the fiscal year ending June 30, 1978, the Legislature shall provide an annual appropriation from the General Fund from liquor control profits to the Board of Water Resources to make the loans provided for in Sections 73-10-20, 73-10-21, and 73-10-23. The money appropriated by the Legislature shall be deposited in a fund known as the Water Resources Cities Water Loan Fund.
- (2) All money deposited into the Water Resources Cities Water Loan Fund shall be invested by the state treasurer with interest accruing to the Water Resources Cities Water Loan Fund.

Amended by Chapter 183, 1995 General Session

73-10-23 Loans for water systems -- Board of Water Resources authority -- Procedure.

- (1) The Board of Water Resources is authorized to make loans to cities, towns, metropolitan water districts, water conservancy districts, improvement districts, special improvement districts, or special service districts within the state for the acquisition or construction of new or existing water systems or the improvement or extension of those systems from funds appropriated for the purpose of this chapter.
- (2)
 - (a) Cities, towns, or districts which participate in this program shall submit an application for funds to the Board of Water Resources.

- (b) The application may request a loan to cover all or part of the cost of an eligible project.
 - (c) Requests for loans shall be submitted in a form and shall include information as the board prescribes.
- (3)
- (a) The board shall establish criteria for determining eligibility for loans and shall determine appropriate priorities among projects.
 - (b) Funds received from the repayment of loans shall be added to this special fund and be available for additional loans under the administration of the board.
 - (c) In determining priorities for eligible projects, the board shall consider:
 - (i) probable growth of population due to actual or prospective economic development in an area;
 - (ii) possible additional sources of state and local revenue;
 - (iii) opportunities for expanded employment;
 - (iv) present or potential health hazards;
 - (v) water systems which do not meet minimum state standards;
 - (vi) cities, towns, or districts which have insufficient water to meet current demands;
 - (vii) feasibility and practicality of the project;
 - (viii) per capita cost of the project;
 - (ix) per capita income of the residents in the area;
 - (x) the borrowing capacity of the city, town, or district and its ability to sell bonds in the open market; and
 - (xi) the availability of federal funds for the project.
- (4)
- (a) The board shall consult with the Governor's Advisory Council on Community Affairs in the establishment of priorities but that advice is not binding upon the board.
 - (b) If an application is rejected, the board shall notify the applicant stating the reasons for the rejection.
- (5) The Board of Water Resources shall review the plans and specifications for the project prior to approval and may condition approval and the availability of funds on assurances the board considers necessary to ensure that the proceeds of the loan will be used to pay the cost of the project and that the project will be completed.
- (6) Any loan shall specify the terms for repayment and may be evidenced by general obligation bonds, revenue bonds, special assessment bonds, or other bonds or obligations legally issued by the appropriate city, town, metropolitan water district, water conservancy district, improvement district, special improvement district, or special service district and purchased by the board pursuant to the authority for the issuance that exists at the time of the loan.
- (7)
- (a) Upon approval of an application, the board shall advise the applicant and may provide funds as a loan to cover all or part of the costs of eligible projects.
 - (b) Costs of an eligible project may include all costs of acquisition and construction as well as costs incurred for preliminary planning to determine the economic and engineering feasibility of a proposed project, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the project and its financing; the cost of erection, building, acquisition, modification, improvement, or extension of water system facilities and the inspection and supervision of the construction of such facilities.
- (8) No loan shall include any project costs for which the applicant receives federal financial assistance, other than federal loans which must be repaid by the applicant.

Amended by Chapter 306, 2007 General Session

73-10-24 Water Resources Conservation and Development Fund created.

There is created a Water Resources Conservation and Development Fund to further enhance the state's ability to carry out the policy described in Section 73-10-1. The fund shall be administered by the Board of Water Resources. The fund is a revolving fund established for the construction, operation, and maintenance of projects considered by the board to be outside the scope of financing by the Water Resources Construction Fund, as created by Section 73-10-8, and shall include, but not be limited to, flood control projects.

Amended by Chapter 169, 1988 General Session

73-10-25 Contents of fund -- Investment -- Contributions.

- (1) The Water Resources Conservation and Development Fund consists of:
 - (a) money appropriated to it by the Legislature;
 - (b) money received from the sale of project water and power, less operating and maintenance costs;
 - (c) annual payments on contracts for projects constructed under Section 73-10-24 or the State Water Conservation Program; and
 - (d) other money or tax revenues designated by the Legislature to be credited to the Water Resources Conservation and Development Fund.
- (2) All money deposited into the Water Resources Conservation and Development Fund shall be invested by the state treasurer with interest accruing to the Water Resources Conservation and Development Fund, except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986.
- (3) Contributions of money, property, or equipment may be received from any political subdivision of the state, federal agency, water users' association, person, or corporation for use in carrying out the purposes of Section 73-10-24.

Amended by Chapter 4, 1991 Special Session 1

Amended by Chapter 4, 1991 Special Session 1

73-10-25.1 Credit enhancement and interest buy-down agreements.

- (1) The Board of Water Resources may enter into credit enhancement agreements with political subdivisions containing terms and provisions that the board determines will reasonably improve the security for or marketability of water project obligations financed using the Water Resources Cities Water Loan Fund created in Section 73-10-22 or the Water Resources Conservation and Development Fund created in Section 73-10-24. Credit enhancement agreements may include provisions for loans to political subdivisions to pay the costs of obtaining letters of credit or other forms of insurance or security to provide security for water project obligations.
- (2) The Board of Water Resources may make loans or grants from the Water Resources Cities Water Loan Fund or the Water Resources Conservation and Development Fund to political subdivisions for interest buy-down agreements for water development projects.

Amended by Chapter 199, 1996 General Session

73-10-26 Definitions -- Construction of a project by board -- Ownership and operation -- Transfer of a water right -- Purchase of a bond from an Indian tribe.

(1) As used in this section:

- (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.
- (b) "Bond" means:
 - (i) a written obligation to repay borrowed money, whether denominated a bond, note, warrant, certificate of indebtedness, or otherwise; and
 - (ii) a lease agreement, installment purchase agreement, or other agreement that includes an obligation to pay money.
- (c) "Division" means the Division of Water Resources created in Section 73-10-18.
- (d) "Project" means a facility, works, or other real or personal property that:
 - (i) conserves or develops the water or hydroelectric power resources of the state; or
 - (ii) controls flooding.

(2)

- (a) The board, through the division, may construct a project.
- (b) An electric public utility or a municipality of the state may construct an electrical facility incidental to a project.
- (c) If the state constructs the electrical facility, the state must first offer the power and energy derived from the hydroelectric generating project to an electric public utility or municipality in the state for distribution to electric consumers.

(3)

- (a) The board, through the division, may consider a flood control project in the same manner and apply the same procedures and rules as the board would consider or apply to another project within its statutory authority.
- (b) If funds controlled by the board are to be used for the flood control project, the planning of the project is subject to the review of the board.
- (c) If the flood control project is authorized for construction, the plans, specifications, and construction supervision shall be undertaken as prescribed by the board.

(4) The board may enter into an agreement for the construction or financing of a project financed with money from the Water Resources Conservation and Development Fund with another state, the federal government, a political subdivision of the state, an Indian tribe, or a private corporation.

(5)

- (a)
 - (i) Except as provided by Subsections (5)(a)(ii) and (b), title to a project, including a water right, constructed or acquired with money from the Water Resources Conservation and Development Fund is vested in the state.
 - (ii) The board may take a bond legally issued by the project sponsor in lieu of or in addition to taking title to the project and water right.
- (b) If an Indian tribe sponsors a project, the board may take a bond legally issued by the tribe, to the extent that federal law allows the tribe to issue a bond, in lieu of taking title to the project and water right, if the tribe:
 - (i) waives the defense of sovereign immunity regarding the bond issue in an action arising out of the issuance or default under the bond; and
 - (ii) agrees in writing that it will not challenge state court jurisdiction over any litigation resulting from default on its obligation in the transaction.
- (c) Before entering into an agreement with or purchasing a bond from a tribe, the board shall:

- (i) require that the tribe obtain the written approval of the Secretary of the United States Department of the Interior or the secretary's designee to all aspects of the agreement or bond;
 - (ii) obtain a legal opinion from a recognized bond counsel certifying:
 - (A) that the tribe has legal authority to:
 - (I) enter into the agreement; or
 - (II) issue the bond;
 - (B) that the pledge of an asset or revenue by the tribe as security for the payments under the agreement or bond is a valid and legally enforceable pledge; and
 - (C) that the agreement or bond may be enforced in a court of general jurisdiction in the state; and
 - (iii) determine whether it has sufficient legal recourse against the tribe and against a security pledged by the tribe in the event of default.
- (6)
 - (a) The board may own and operate a project if:
 - (i) the project is consistent with the plan adopted by the board; and
 - (ii) in the opinion of the board the ownership and operation of the project by the board is in the best interest of the state.
 - (b) In the ownership and operation of a project referred to in Subsection (6)(a), the board shall use a water right held in its name under authority of Section 73-10-19.
 - (c)
 - (i) The board may enter into a contract with another state, the federal government, a political subdivision of the state, an Indian tribe, or a private corporation for operation, maintenance, and administration of the project.
 - (ii) The board may pay the contracting agency a reasonable sum for operation, maintenance, and administration of the project.
- (7)
 - (a) The board may also:
 - (i) enter into an agreement in which title to a project is conveyed to a cooperating project sponsor after charges assessed against the project have been paid to the state in accordance with the terms of the construction agreement or amendment to the agreement;
 - (ii) make the water and power available to the state's citizens who are, in the board's opinion, best able to use the water and power:
 - (A) that is conserved by the project; and
 - (B) to which the state has title;
 - (iii) enter into a contract for the use of the water and power with an individual or an organization composed of the state's citizens; and
 - (iv) assess a reasonable fee against a person using water and power from a project.
 - (b) The amount collected over the amount to be returned to the state for payment of the principal, interest, and maintenance of the project shall be deposited in the Water Resources Conservation and Development Fund as established by Section 73-10-24.
- (8) The board shall retain ownership of a water right used for a project owned and operated by the board unless:
 - (a) the water right originally held by a cooperating project sponsor is conveyed to the project sponsor upon payment to the state of charges assessed against the project in accordance with the terms of the construction agreement or an amendment to the agreement; or

- (b) the board transfers an unperfected water right held by the board that is not being used in a state-owned project to a political subdivision of the state, an agency of the federal government, or a nonprofit water company.
- (9) A transfer of the board's water right shall be made to the entity that is best able to use the water right for the benefit of the state's citizens.

Amended by Chapter 267, 2008 General Session

73-10-27 Definitions -- Project priorities -- Considerations -- Determinations of feasibility -- Bids and contracts -- Definitions -- Retainage.

- (1) As used in this section:
 - (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.
 - (b) "Estimated cost" means the cost of the labor, material, and equipment necessary for construction of the contemplated project.
 - (c) "Lowest responsible bidder" means a licensed contractor:
 - (i) who:
 - (A) submits the lowest bid; and
 - (B) furnishes a payment bond and a performance bond under Sections 14-1-18 and 63G-6a-1103; and
 - (ii) whose bid:
 - (A) is in compliance with the invitation for a bid; and
 - (B) meets the plans and specifications.
- (2) In considering the priority for a project to be built or financed with funds made available under Section 73-10-24, the board shall give preference to a project that:
 - (a) is sponsored by, or for the benefit of, the state or a political subdivision of the state;
 - (b) meets a critical local need;
 - (c) has greater economic feasibility;
 - (d) will yield revenue to the state within a reasonable time or will return a reasonable rate of interest, based on financial feasibility; and
 - (e) meets other considerations deemed necessary by the board, including wildlife management and recreational needs.
- (3)
 - (a) In determining the economic feasibility, the board shall establish a benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.
 - (b) In considering whether a project should be built, the benefit-to-cost ratio for each project shall be weighted based on the relative cost of the project.
 - (c) A project, when considered in total with all other projects constructed under this chapter and still the subject of a repayment contract, may not cause the accumulative benefit-to-cost ratio of the projects to be less than one to one.
- (4) A project may not be built if the project is not:
 - (a) in the public interest, as determined by the board; or
 - (b) adequately designed based on sound engineering and geologic considerations.
- (5) In preparing a project constructed by the board, the board shall:
 - (a) based on a competitive bid, award a contract for:
 - (i) a flood control project:
 - (A) involving a city or county; and
 - (B) costing in excess of \$35,000;
 - (ii) the construction of a storage reservoir in excess of 100 acre-feet; or

- (iii) the construction of a hydroelectric generating facility;
 - (b) publish an advertisement for a competitive bid:
 - (i) at least once a week for three consecutive weeks in a newspaper with general circulation in the state, with the last date of publication appearing at least five days before the schedule bid opening; and
 - (ii) indicating that the board:
 - (A) will award the contract to the lowest responsible bidder; and
 - (B) reserves the right to reject any and all bids;
 - (c) readvertise the project in the manner specified in Subsection (5)(b) if the board rejects all of the initial bids on the project; and
 - (d) keep an accurate record of all facts and representations relied upon in preparing the board's estimated cost for a project that is subject to the competitive bidding requirements of this section.
- (6) If no satisfactory bid is received by the board upon the readvertisement of the project in accordance with Subsection (5), the board may proceed to construct the project in accordance with the plan and specifications used to calculate the estimated cost of the project.
- (7) If a payment on a contract with a private contractor for construction of a project under this section is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Amended by Chapter 347, 2012 General Session

73-10-28 Charges for use -- Interest.

- (1) As used in this section, "board" means the Board of Water Resources created in Section 73-10-1.5.
- (2) The board shall establish:
- (a) a charge for the use of water, power, or a facility based on:
 - (i) a contractual agreement approved by the board for a project owned by the state; and
 - (ii) the ability of an individual project to return the investment to the state; and
 - (b) an interest rate for the money the board lends to finance a project based on:
 - (i) market conditions;
 - (ii) the repayment ability of the project; and
 - (iii) other factors considered relevant by the board.

Amended by Chapter 267, 2008 General Session

73-10-29 Additional amounts allocated -- Repayment.

The board, in addition to the amount allocated to a project to cover the actual cost of construction, may allocate to the project constructed by it, under contract or otherwise, such amounts as may be determined by it for investigating, engineering, inspection, and other expenses, and may provide for the repayment of the same out of the first money repayable from the project under the contract for its construction, and such money so repaid shall be accounted for within the Water Resources Construction Fund, to be used by the board for the purpose of making investigations for the development of the water resources of the state.

Amended by Chapter 169, 1988 General Session

73-10-30 Construction in conjunction with Water Resources Construction Fund -- Supplemental financing.

- (1) Projects authorized under this chapter may be constructed in participation with money from the Water Resources Construction Fund when authorized by the board.
- (2) Projects specified by the Legislature to be financed by general obligation bonds of the state may receive supplemental financing from the Water Resources Conservation and Development Fund when needed and money is available.

Amended by Chapter 342, 2011 General Session

73-10-31 Allocation of funds for credit enhancement and interest buy-down agreements.

- (1) Of the combined expenditures from the Water Resources Cities Water Loan Fund and Water Resources Conservation and Development Fund authorized by the Board of Water Resources each year, at least 10% shall be allocated for credit enhancement and interest buy-down agreements.
- (2) The requirement specified in Subsection (1) shall apply only so long as sales and use tax is transferred to the Water Resources Conservation and Development Fund as provided in Section 59-12-103.

Enacted by Chapter 199, 1996 General Session

73-10-32 Definitions -- Water conservation plan required.

- (1) As used in this section:
 - (a) "Board" means the Board of Water Resources created under Section 73-10-1.5.
 - (b) "Division" means the Division of Water Resources created under Section 73-10-18.
 - (c) "Retail" means the level of distribution of culinary water that supplies culinary water directly to the end user.
 - (d) "Retail water provider" means an entity which:
 - (i) supplies culinary water to end users; and
 - (ii) has more than 500 service connections.
 - (e) "Water conservancy district" means an entity formed under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act.
 - (f) "Water conservation plan" means a written document that contains existing and proposed water conservation measures describing what will be done by retail water providers, water conservancy districts, and the end user of culinary water to help conserve water and limit or reduce its use in the state in terms of per capita consumption so that adequate supplies of water are available for future needs.
- (2)
 - (a) Each water conservation plan shall contain:
 - (i) a clearly stated overall water use reduction goal and an implementation plan for each of the water conservation measures it chooses to use, including a timeline for action and an evaluation process to measure progress;
 - (ii) a requirement that each water conservancy district and retail water provider devote part of at least one regular meeting every five years of its governing body to a discussion and formal adoption of the water conservation plan, and allow public comment on it;
 - (iii) a requirement that a notification procedure be implemented that includes the delivery of the water conservation plan to the media and to the governing body of each municipality and county served by the water conservancy district or retail water provider; and

- (iv) a copy of the minutes of the meeting and the notification procedure required in Subsections (2)(a)(ii) and (iii) which shall be added as an appendix to the plan.
 - (b) A water conservation plan may include information regarding:
 - (i) the installation and use of water efficient fixtures and appliances, including toilets, shower fixtures, and faucets;
 - (ii) residential and commercial landscapes and irrigation that require less water to maintain;
 - (iii) more water efficient industrial and commercial processes involving the use of water;
 - (iv) water reuse systems, both potable and not potable;
 - (v) distribution system leak repair;
 - (vi) dissemination of public information regarding more efficient use of water, including public education programs, customer water use audits, and water saving demonstrations;
 - (vii) water rate structures designed to encourage more efficient use of water;
 - (viii) statutes, ordinances, codes, or regulations designed to encourage more efficient use of water by means such as water efficient fixtures and landscapes;
 - (ix) incentives to implement water efficient techniques, including rebates to water users to encourage the implementation of more water efficient measures; and
 - (x) other measures designed to conserve water.
 - (c) The Division of Water Resources may be contacted for information and technical resources regarding measures listed in Subsections (2)(b)(i) through (2)(b)(x).
- (3)
- (a) Before April 1, 1999, each water conservancy district and each retail water provider shall:
 - (i)
 - (A) prepare and adopt a water conservation plan if one has not already been adopted; or
 - (B) if the district or provider has already adopted a water conservation plan, review the existing water conservation plan to determine if it should be amended and, if so, amend the water conservation plan; and
 - (ii) file a copy of the water conservation plan or amended water conservation plan with the division.
 - (b) Before adopting or amending a water conservation plan, each water conservancy district or retail water provider shall hold a public hearing with reasonable, advance public notice.
- (4)
- (a) The board shall:
 - (i) provide guidelines and technical resources to retail water providers and water conservancy districts to prepare and implement water conservation plans;
 - (ii) investigate alternative measures designed to conserve water; and
 - (iii) report regarding its compliance with the act and impressions of the overall quality of the plans submitted to the Natural Resources, Agriculture, and Environment Interim Committee of the Legislature at its meeting in November 2004.
 - (b) The board shall publish an annual report in a paper of state-wide distribution specifying the retail water providers and water conservancy districts that do not have a current water conservation plan on file with the board at the end of the calendar year.
- (5) A water conservancy district or retail water provider may only receive state funds for water development if they comply with the requirements of this act.
- (6) Each water conservancy district and retail water provider specified under Subsection (3)(a) shall:
- (a) update its water conservation plan no less frequently than every five years; and
 - (b) follow the procedures required under Subsection (3) when updating the water conservation plan.

- (7) It is the intent of the Legislature that the water conservation plans, amendments to existing water conservation plans, and the studies and report by the board be handled within the existing budgets of the respective entities or agencies.

Amended by Chapter 329, 2007 General Session

73-10-32.5 Culinary water pricing structure.

A retail water provider, as defined in Section 73-10-32, shall:

- (1) establish a culinary water rate structure that:
 - (a) incorporates increasing block units of water used; and
 - (b) provides for an increase in the rate charged for additional block units of water used as usage increases from one block unit to the next;
- (2) provide in customer billing notices, or in a notice that is distributed to customers at least annually, block unit rates and the customer's billing cycle; and
- (3) include individual customer water usage in customer billing notices.

Enacted by Chapter 282, 2016 General Session

73-10-33 Management plan for water conveyance facilities.

- (1) As used in this section:
 - (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.
 - (b) "Conservation district" means a conservation district created under Title 17D, Chapter 3, Conservation District Act.
 - (c) "Division" means the Division of Water Resources created by Section 73-10-18.
 - (d) "Facility owner or operator" means:
 - (i) a water company as defined in Subsection 73-3-3.5(1)(b); or
 - (ii) an owner or operator of a water conveyance facility.
 - (e) "Management plan" means a written document meeting the requirements of Subsection (3).
 - (f) "Potential risk" means a condition where, if a water conveyance facility fails, the failure would create a high probability of:
 - (i) causing loss of human life; or
 - (ii) causing extensive economic loss, including damage to critical transportation facilities, utility facilities, or public buildings.
 - (g) "Potential risk location" means a segment of a water conveyance facility that constitutes a potential risk due to:
 - (i) location;
 - (ii) elevation;
 - (iii) soil conditions;
 - (iv) structural instability;
 - (v) water volume or pressure; or
 - (vi) other conditions.
 - (h)
 - (i) "Water conveyance facility" means a water conveyance defined in Section 57-13a-101.
 - (ii) "Water conveyance facility" does not include:
 - (A) a pipeline conveying water for industrial use, or municipal use, within a public water system as defined in Section 19-4-102;
 - (B) a natural channel used to convey water for use within a water conveyance facility; or
 - (C) a fully piped irrigation system.

- (2)
 - (a) For a water conveyance facility that has a potential risk location, the board or division may issue a grant or loan to the facility owner or operator, and the facility owner or operator may receive state money for water development or water conveyance facility repair or improvements, only if the facility owner or operator promptly adopts a management plan in accordance with this section.
 - (b) For a management plan to be considered to be promptly adopted for purposes of this Subsection (2), the facility owner or operator shall:
 - (i) adopt the management plan by an affirmative vote of the facility owner or operator's board of directors, or persons occupying a similar status or performing similar functions before receiving money under Subsection (2)(a);
 - (ii)
 - (A) adopt the management plan as described in Subsection (2)(b)(i) by no later than:
 - (I) May 1, 2013, for a water conveyance facility in operation on May 11, 2011; or
 - (II) for a water conveyance facility that begins operation after May 11, 2011, one year after the day on which the water conveyance facility begins operation; or
 - (B)
 - (I) adopt the management plan as described in Subsection (2)(b)(i); and
 - (II) provide written justification satisfactory to the board as to why the facility owner or operator was unable to adopt a management plan during the time period provided in Subsection (2)(b)(ii)(A); and
 - (iii) update the management plan adopted under Subsection (2)(b)(i) no less frequently than every 10 years.
- (3) A management plan described in Subsection (2) shall include at least the following:
 - (a) a GIS coverage or drawing of each potential risk location of a water conveyance facility identifying any:
 - (i) existing canal and lateral alignment of the canal facility;
 - (ii) point of diversion;
 - (iii) bridge;
 - (iv) culvert;
 - (v) screen or trash rack; and
 - (vi) spill point;
 - (b) an evaluation of any potential slope instability that may cause a potential risk, including:
 - (i) failure of the facility;
 - (ii) land movement that might result in failure of the facility; or
 - (iii) land movement that might result from failure of the facility;
 - (c) proof of insurance coverage or other means of financial responsibility against liability resulting from failure of the water conveyance facility;
 - (d) a maintenance and improvement plan;
 - (e) a schedule for implementation of a maintenance and improvement plan;
 - (f) an emergency response plan that:
 - (i) is developed after consultation with local emergency response officials;
 - (ii) is updated annually; and
 - (iii) includes, in the case of an emergency, how a first responder can:
 - (A) contact the facility owner or operator; and
 - (B) obtain information described in Subsection (3)(a);
 - (g) any potential source of financing for maintenance and improvements under a maintenance and improvement plan;

- (h) identification of each municipality or county through which water is conveyed or delivered by the water conveyance facility;
- (i) a statement concerning whether storm water enters the water conveyance facility; and
- (j) if storm water enters the water conveyance facility:
 - (i) an estimate of the maximum volume and flow of all water present in the water conveyance facility as a result of a six-hour, 25-year storm event;
 - (ii) on the basis of information provided in accordance with Subsection (4), identification of the points at which any storm structures introduce water into the water conveyance facility and the anticipated flow that may occur at each structure; and
 - (iii) the name of each governmental agency that has responsibility for storm water management within the area from which storm water drains into the water conveyance facility.
- (4) A private or public entity that introduces storm water into a water conveyance facility shall provide the facility owner or operator with an estimate of the maximum volume and flow of water that may occur at each structure that introduces storm water into the water conveyance facility.
- (5)
 - (a) A facility owner or operator of a water conveyance facility shall provide a municipality or county in which is located a potential risk location of the water conveyance facility an outline of the information provided in Subsection (3)(f).
 - (b) A facility owner or operator shall give notice to the planning and zoning department of each municipality and county identified in Subsection (3)(h) outlining the information provided in Subsections (3)(f), (i), and (j).
 - (c) An outline of information provided under this Subsection (5) is a protected record under Section 63G-2-305.
- (6)
 - (a) The division may provide information and technical resources to a facility owner or operator of a water conveyance facility, regardless of whether the water conveyance facility has a potential risk location.
 - (b) In providing the information and resources described in Subsection (6)(a), the division may coordinate with efforts of any association of conservation districts that may provide similar information and technical resources.
 - (c) The information and technical resources described in Subsection (6)(a) include:
 - (i) engaging state and local water users in voluntary completion of a management plan;
 - (ii) developing standard guidelines, checklists, or templates that may be used by a facility owner or operator;
 - (iii) using conservation districts as points of contact with a facility owner or operator;
 - (iv) providing training to help a facility owner or operator to adopt a management plan; and
 - (v) assisting, at the request and under the direction of, a facility owner or operator with efforts to adopt or implement a management plan.
- (7)
 - (a) A facility owner or operator of a water conveyance facility that has a potential risk location shall provide the board or division upon request:
 - (i) written certification signed under oath by a person authorized to act for the board of directors or persons occupying a similar status or performing similar functions, certifying that the management plan complies with this section; and
 - (ii) an opportunity to review a management plan.
 - (b) A management plan received by the board or division under this section is a protected record under Section 63G-2-305.

- (8) The board shall report concerning compliance with this section to the Natural Resources, Agriculture, and Environment Interim Committee of the Legislature before November 30, 2013.
- (9) The division and board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning the requirements of this section.
- (10) This section does not:
 - (a) create a private right of action for a violation of this section; or
 - (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility owner or operator in a civil action for a cause of action that is not based on a violation of this section.
- (11) The following may not be introduced as evidence in any civil litigation on the issue of negligence, injury, or the calculation of damages:
 - (a) a management plan prepared in accordance with this section;
 - (b) the failure to prepare or adopt a management plan in accordance with this section; or
 - (c) the failure to update a management plan in accordance with this section.

Amended by Chapter 355, 2014 General Session